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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 RANDALL S. HOLDEN,) CASE NO. CV 10-3184-AHM (PJW)
11)
12 Petitioner,) ORDER TO SHOW CAUSE WHY PETITION
13) SHOULD NOT BE DISMISSED
14 v.)
15)
16 KELLEY HARRINGTON,)
17)
18 Respondent.)
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16 On April 28, 2010, Petitioner filed a Petition for Writ of Habeas
17 Corpus, seeking to challenge his 2008 state court convictions for lewd
18 acts with a child under the age of 14. (Petition at 2.) In the
19 Petition, he claims that he received ineffective assistance of
20 counsel. (Petition, Attached Statement of Facts.)


21 As a matter of comity between state and federal courts, a federal
22 court generally will not address the merits of a habeas corpus
23 petition unless the petitioner has first exhausted his state remedies,
24 i.e., sought state court review of every ground presented in the
25 petition by presenting it to the highest state court. *Rose v. Lundy*,
26 455 U.S. 509, 518-22 (1982). Indeed, the law governing habeas
27 petitions provides that a habeas petition brought by a person in state
28 custody *cannot be granted* "unless it appears that--(A) the applicant

1 has exhausted the remedies available in the courts of the State; or
2 (B)(i) there is an absence of available State corrective process; or
3 (ii) circumstances exist that render such process ineffective to
4 protect the rights of the applicant." 28 U.S.C. § 2254(b)(1). To
5 exhaust state remedies, a petitioner must fairly present his
6 contentions to the state courts, and the highest court of the state
7 must dispose of them on the merits. *O'Sullivan v. Boerckel*, 526 U.S.
8 838, 842, 844-45 (1999). A district court may raise a failure to
9 exhaust *sua sponte*. *Stone v. San Francisco*, 968 F.2d 850, 856 (9th
10 Cir. 1992.)

11 In his Petition, Petitioner has checked the box indicating that
12 he has raised his claims of ineffective assistance of counsel in a
13 petition for review in the California Supreme Court. The state case
14 number he gives (B206487), however, refers to an appeal filed in the
15 California Court of Appeal. Further, a check of the California
16 Appellate Courts' website does not show any filings from Petitioner in
17 the California Supreme Court. Thus, it appears that the Petition is
18 completely unexhausted and is subject to dismissal on that basis. See
19 *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006). Petitioner
20 must first present his claims to the state supreme court, either
21 through direct appeal or in a petition for habeas corpus, and have
22 that court decide them on their merits before he can proceed in this
23 Court.

1 IT IS THEREFORE ORDERED that, no later than May 31, 2010,
2 Petitioner shall inform the Court in writing why this case should not
3 be dismissed for failure to exhaust. Failure to timely file a
4 response will result in a recommendation that this case be dismissed.

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6 DATED: May 3, 2010

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PATRICK J. WALSH
9 UNITED STATES MAGISTRATE JUDGE

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28 S:\PJW\Cases-State Habeas\HOLDEN, R 3184\OSC dismiss pet.wpd